



Office of the Attorney General
State of Texas

January 17, 1997

DAN MORALES
ATTORNEY GENERAL

Mr. Barry R. Werner
Assistant City Attorney
Municipal Building
Dallas, Texas 75201

OR97-0101

Dear Mr. Werner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103067.

The Dallas Police Department (the "department") received a request for the narrative report of service number 0941626-E and the "probable cause affidavit that is put in court's file of felony case." You contend that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Initially, the request seeks an affidavit that may have been filed in a Texas court. If you maintain the requested document and it has been filed with a court, it is a part of the public record and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding). If, however, the document has not been filed with a court, it may be protected from disclosure by section 552.103 of the Government Code. Thus, we now turn to your argument under section 552.103.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the

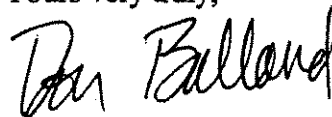
information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the Dallas County District Attorney is prosecuting the subject of the requested documents. You have provided this office with a letter from Mr. Donald G. Davis, a prosecuting attorney in that case. He states that the case against the defendant is pending and that he seeks to withhold the requested documents. After reviewing the submitted materials, we concluded that litigation is pending and that the documents relate to the litigation.

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. See *Houston Chronicle*, 531 S.W.2d at 187; cf. Open Records Decision No. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103); see also Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Additionally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a). We therefore conclude that, except for front page offense report information, information seen by the opposing party, and information that has been filed in a court, section 552.103 of the Government Code excepts the requested records from required public disclosure.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

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¹The applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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Enclosures: Submitted documents

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(w/o enclosures)